

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Amy Palmer	Team: Team # 1	CCRB Case #: 200301499	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/26/2003 3:30 PM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 8/26/2004	EO SOL 8/26/2004	
Date/Time CV Reported Wed, 02/26/2003 5:25 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 02/26/2003 5:25 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Shane Killilea	30946	927030	073 PCT
2. POM Jason Cuttler	08317	926732	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Vincent Capobianco	01437	913129	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Shane Killilea	Abuse: PO Shane Killilea forcibly stopped § 87(2)(b) § 87(2)(b).	§ 87(2)(b)
B.POM Jason Cuttler	Abuse: PO Jason Cuttler forcibly stopped § 87(2)(b) § 87(2)(b).	§ 87(2)(b)
C.POM Jason Cuttler	Discourtesy: PO Jason Cuttler spoke obscenely and/or rudely to § 87(2)(b).	§ 87(2)(b)
D.POM Shane Killilea	Abuse: PO Shane Killilea issued a summons to § 87(2)(b) § 87(2)(b) for disorderly conduct/obstructing vehicular traffic.	§ 87(2)(b)
E.POM Shane Killilea	Abuse: PO Shane Killilea issued a summons to § 87(2)(b) § 87(2)(b) for disorderly conduct/threatening behavior.	§ 87(2)(b)
F.POM Shane Killilea	Abuse: PO Shane Killilea issued a summons to § 87(2)(b) § 87(2)(b) for § 87(2)(b).	§ 87(2)(b)
G.POM Shane Killilea	Abuse: PO Shane Killilea issued a summons to § 87(2)(b) § 87(2)(b) for disorderly conduct/obscene language.	§ 87(2)(b)

Synopsis

§ 87(2)(b) was crossing the street near his apartment while carrying a bottle in a brown paper bag. PO Killilea and PO Cuttler approached § 87(2)(b) and used the minimal necessary force to stop and arrest him (Allegations A and B: forcible stop). While attempting to handcuff § 87(2)(b) PO Cuttler allegedly said “Get the fuck up against the car,” (Allegation C: discourteous language). § 87(2)(b) was brought to the precinct where PO Killilea issued him four summonses (Allegations D, E, F, and G: retaliatory summonses).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b)-year-old black male § 87(2)(b) § 87(2)(b), who was interviewed by the CCRB on 3/19/03 (Encl. 15a-d). He was also contacted via telephone on 9/24/03 to clarify a few additional points (Encl. 16). § 87(2)(b), § 87(2)(g)

On 2/26/03, at approximately 3:30 PM, § 87(2)(b) § 87(2)(b) and then went to the corner store at § 87(2)(b). He was carrying a sealed 12-oz Heineken bottle completely wrapped in a brown paper bag. As he walked towards the store, he observed two officers in a marked van. § 87(2)(b)

[REDACTED]

[REDACTED] He stated that he’d seen the officers around the neighborhood before and that “everybody knows their faces.”

§ 87(2)(b) stated that he recognized them as troublemakers and started laughing at them and pointing at them, saying, “I see you.” The officers, in a marked van, came behind him from Hegeman Street

and pulled over. § 87(2)(b) felt they were coming to bother him, and decided to return to his building, crossing the street diagonally, corner to corner. The two officers exited their vehicle and followed him across the street on foot, catching up to him at the corner of § 87(2)(b). § 87(2)(b) obtained the officers' names off their badges later in the incident. PO Killilea was about 6'1", 205 lbs., dirty blonde hair, dark blue eyes, and was the driver of the car. PO Cuttler was 5'11", black hair, brown eyes, and was a little slimmer than PO Killilea.

§ 87(2)(b) voluntarily turned around when PO Killilea said, "Stop, you come here." At the officer's request, § 87(2)(b) provided his § 87(2)(b), which the officer examined. § 87(2)(b) stated that officers often stop people and ask for ID and detain them if they don't have any, and stated these officers seemed stumped because he had ID. § 87(2)(b) continued waiting for about five minutes, asking the officer if he was being arrested or getting a summons, or if not, why he was being detained. The officer did not answer so finally § 87(2)(b) said, "give me my ID back," and grabbed it back from PO Killilea, who tried to hold onto it. § 87(2)(b) knew the officers were trying to get the ID back, so he attempted to pass it to his friend § 87(2)(b) who was on the corner about five feet away, waiting for a cab. When asked why he tried to give her the ID, § 87(2)(b) stated, "What did he want my ID for? I felt he already had a chance to look at my ID card. Whatever he was going to do he could have done already." He did not get a chance to give § 87(2)(b) the ID. PO Killilea took the beer bottle out of his hand and placed it on the ground. § 87(2)(b) told the officers to leave § 87(2)(b) alone, and the officers told her to mind her own business.

Since the officer had been with him for about five minutes and hadn't indicated that he was going to issue a summons or make an arrest, § 87(2)(b) walked back towards his building into the projects with his hands clasped behind his head, so that he wouldn't be perceived as a threat and the officers wouldn't claim he'd done anything aggressive. PO Killilea stated "come here," and grabbed his jacket. PO Cuttler pulled § 87(2)(b) back by the arm, and § 87(2)(b) "snatched" his arm away. § 87(2)(b) stated that he wanted the officer to get off of him. PO Cuttler tossed his ID to the ground.

Back-up officers arrived, but did not participate in his handcuffing. PO Cuttler grabbed § 87(2)(b) by his left arm and forced him backward against a car, causing bruising to § 87(2)(b)'s inner left bicep. PO Cuttler said, "Get the fuck up against the car." This was the only profanity used by officers and § 87(2)(b) also admitted to using profanity at this point, stating, "Leave me the fuck alone." § 87(2)(b) was laughing at PO Cuttler and telling him he was tough now that his backup had arrived. PO Cuttler turned § 87(2)(b) around, who put his hands behind his back because he realized that he was getting arrested. At this point, people were coming outside and looking out their windows. § 87(2)(b) stated it wasn't a loud scene but people were definitely watching.

PO Cuttler handcuffed § 87(2)(b) and placed him in the van. After being driven a short way PO Killilea and PO Cuttler stopped the car, asking him his birthday, but § 87(2)(b) did not provide this information. He stated during his interview that this was because he "knew" that he had to be taken to the precinct once he was handcuffed, anyway. A female sergeant came to the scene and spoke briefly to PO Killilea for a few minutes, but § 87(2)(b) could not hear what was being said.

At the precinct he was placed in a holding cell for about fifteen minutes and told by PO Killilea that he was being arrested § 87(2)(b) because "you don't learn." PO Killilea also accused § 87(2)(b) of having called the officer a "pussy" and an "asshole." § 87(2)(b) was released with four summonses. One of these was for littering, which § 87(2)(b) claimed he did not do. The others were for obstructing vehicular traffic, which he also denied doing, obscene language (which § 87(2)(b) admitted), and threatening behavior. § 87(2)(b) and his mother returned to the precinct later that day and were given the number to the CCRB. They filed their complaint at 5:25 that afternoon.

The return date on the summons was 3/2/03, a Sunday, and § 87(2)(b) stated that when he went to court on that date the courts were not open. § 87(2)(b) was told on that date by a woman working at the court that the officer had done that on purpose, that his tickets were not even in the system, and he should come back next month. At the time of his interview, § 87(2)(b) stated that he intended to plead not guilty because he didn't do anything.

§ 87(2)(b) provided the CCRB with photographs taken of his arm on the date of the incident, when he returned from the precinct. They show purple bruises to the inside of § 87(2)(b)'s left arm.

Results of Investigation

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) year old female acquaintance of § 87(2)(b)s who lives near him on § 87(2)(b). She was interviewed by the CCRB on 4/28/03 (Encl. 18a-c). On the date of the incident, § 87(2)(b) was walking to the corner of § 87(2)(b) with her sister § 87(2)(b) to get a cab. § 87(2)(b) saw § 87(2)(b) exit a grocery store, alone, and cross the street. He did not linger in the street, block traffic, or say anything. He did not call anyone a “pussy-ass motherfucker.” § 87(2)(b) was carrying a bag with a closed Heineken bottle.

Officers pulled up in front of the grocery store, looked at § 87(2)(b) and followed him across the street. They walked up to him, asked what he was carrying and then requested ID, so § 87(2)(b) provided § 87(2)(b) ID. The officers looked at it, and one officer gave it back to § 87(2)(b). The other officer § 87(2)(b) did not recall their respective descriptions or any differences between them) asked for the ID back, but § 87(2)(b) said “no, I just showed it to you.” § 87(2)(b) unsuccessfully tried to give the ID to § 87(2)(b) but the officers grabbed him. § 87(2)(b) put the bottle down himself and put his hands in the air over his head to demonstrate that he was not a threat. § 87(2)(b) was telling the officers that they always have the wrong person, and that § 87(2)(b) didn’t do anything. She stated during her interview, “That boy goes to school. He’s one of the decent guys.”

§ 87(2)(b) eventually gave the ID back to the officers. The officers told him to come with them to the car and § 87(2)(b) said, “why are you bothering me, I didn’t do anything, why do you want me to go to the car?” They were almost to the car when the officers started “grabbing on” § 87(2)(b). Under questioning § 87(2)(b) clarified that they were patting him down and pushing him where he didn’t want to go (towards the car). Initially § 87(2)(b) stated that § 87(2)(b) was thrown against their car, but under questioning stated that she did not see him get pushed against the car because she left as he was being brought to the car. She did not see him get kicked or punched, and did not hear any profanity used.

The officers handcuffed § 87(2)(b) again “grabbing on” him, and backup officers arrived. She and her sister left before § 87(2)(b) was placed in a vehicle. § 87(2)(b) suggested that § 87(2)(b) didn’t give the officers any trouble because he knew that he hadn’t done anything wrong. No large crowd had formed.

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) year old woman who was interviewed by the CCRB on 4/28/03 (Encl. 17a-c). She stated that on the date of the incident, she and her sister § 87(2)(b) were getting in a cab when they saw their acquaintance § 87(2)(b) exit a store carrying a brown bag and cross the street to reenter his housing complex. He crossed the street on a crosswalk and did not stop in the street or say anything before the officers arrived.

Two officers pulled up and said, “Hey you, stop.” § 87(2)(b) kept questioning why he should stop since he hadn’t done anything wrong. When the officers reached him, § 87(2)(b) started yelling. His hands were up over his head. When directly questioned, § 87(2)(b) stated that the officers did not need to chase § 87(2)(b) and that he stopped when ordered to do so.

Officers grabbed his coat, patted him down, and went into his coat pockets. § 87(2)(b) said, “Get off me.” § 87(2)(b) was five feet away at this point. The officers asked to see ID, which § 87(2)(b) provided. He was standing with his hands up and his fingers clasped. The officers looked at the ID for a while, and § 87(2)(b) said, “Can someone get my ID back?” § 87(2)(b) wanted to take the ID but the officers threw it on the ground. § 87(2)(b) stated that officers were “throwing it all over the place.” At some point § 87(2)(b) placed the brown bag on the ground himself.

§ 87(2)(b) asked if he could go, but officers said no and pulled him towards a car which was about ten feet away. § 87(2)(b) was trying to pull away because he didn’t know why they were taking him to the car. The officers pushed him into the car stomach-first. They attempted to handcuff § 87(2)(b), who wasn’t bringing his hands down from above his head. § 87(2)(b) stated, “He was giving them a really hard time because he felt like he didn’t have anything, but he always had his hands up.” She could not hear what the officers were saying, but § 87(2)(b) kept saying, “What are you doing, my hands are up.” Other officers arrived on the scene but she left in the cab before seeing what they did.

Officer Statements

PO Killilea

PO Killilea matches § 87(2)(b)'s description of him and was interviewed by the CCRB on 3/31/03 (Encl. 19a-f). The officer wrote an extensive memo book entry which described statements made by § 87(2)(b) his level of compliance, and his initial offense. § 87(2)(g)

On 2/26/03, PO Killilea was the driver of a marked van, assigned to the Tracer unit with PO Cuttler. At 3:25 PM, PO Killilea observed § 87(2)(b) standing in the street on the southwest corner of the intersection of § 87(2)(b), causing traffic to go around him. § 87(2)(b) was yelling and screaming. The officers pulled the van over and lowered the window so they could hear what he was saying and heard "you're all pussy-ass motherfuckers" directed at them. § 87(2)(b) was carrying a bottle in a brown paper bag and waving his arms. PO Killilea and his partner approached § 87(2)(b) concerned he was an EDP, because they wanted to see what the problem was. They asked him what was wrong and he continued to yell.

§ 87(2)(b) calmed down, stated he didn't have to give them anything, and crossed the street back towards his development. PO Killilea stated that he wanted to see § 87(2)(b)'s ID "...just to see who he was, where he belongs." The officers followed him across the street and onto the opposite corner. Under questioning, PO Killilea eventually stated that he stopped § 87(2)(b) to issue a summons for obstructing traffic. § 87(2)(b) produced § 87(2)(b) ID, which PO Killilea could only look at for a second before § 87(2)(b) snatched it back and walked back towards the housing project.

PO Killilea did not see § 87(2)(b) attempt to pass the ID to any female civilians. A crowd of 30-50 people had gathered and were yelling at officers. This location has been designated as hazardous by the precinct due to several incidents where officers have been injured, and officers are not allowed to respond to calls in this location without backup. At this point, a bottle came off of the roof, and officers felt it was too dangerous to remain in the location. They called for backup and decided to place § 87(2)(b) in cuffs.

PO Killilea stopped § 87(2)(b) by placing a hand on his chest. He intended to arrest him for disorderly conduct. § 87(2)(b) laced his fingers behind his head and refused to lower his arms, despite being told several times to place his hands behind his back because he was under arrest. Each officer grabbed an arm and forced it down, but PO Killilea did not recall which arm he had. He does not recall placing § 87(2)(b) against a vehicle at any point. At some point PO Killilea removed the beer bottle from § 87(2)(b)'s hand and placed it on the ground. No other force was used towards § 87(2)(b).

A SNEU van arrived on the scene and only performed crowd control. PO Killilea stated that at some point a bottle, a brick, and a handcart wheel were thrown off the roof (his memo book indicates only that a bottle was thrown). PO Killilea and PO Cuttler placed a mildly resistant § 87(2)(b) in their van and moved a few blocks away. Sgt. Vivian Lopez came to this location and verified the arrest, though PO Killilea did not tell her details about what § 87(2)(b) did, only that he was going to be arrested for disorderly conduct. They asked § 87(2)(b) his birthday to perform a warrant check from the car, but he did not provide that information.

At the stationhouse, PO Killilea issued § 87(2)(b) four disorderly conduct summonses, including obstructing vehicular traffic, profane language, threatening behavior (for snatching the ID back, which caused PO Killilea to be scratched on the finger) and for littering. All four summonses were approved by Sgt. Capobianco, the school safety sergeant, who was present in the stationhouse at the time. PO Killilea stated that the summons for littering was in regards to § 87(2)(b)'s beer bottle. asked if he could explain his rationale for issuing the summons for littering when he himself had placed § 87(2)(b)'s bottle on the ground, PO Killilea could not, stating "At that point...no, I really don't...I just, I wrote him the summons, not offhand--I'm sorry." He was asked if he now felt it was a mistake and he only reiterated that at the time he believed it was appropriate.

PO Killilea stated that the return date for summons was provided each day by roll call, and his memo book indicated that that date was 3/2/03.

PO Cuttler

PO Cuttler was interviewed by the CCRB on 4/3/03 (Encl. 20a-e). § 87(2)(g) [REDACTED]. PO Cuttler reiterated that § 87(2)(b) [REDACTED] was “ranting and raving” in the middle of the street, blocking traffic. As the officers approached, § 87(2)(b) [REDACTED] directed this screaming towards them, calling them at one point “pussy-ass motherfuckers.” No crowd was present at this point. The officers were concerned that § 87(2)(b) [REDACTED] was an EDP, and approached him either to determine if anything was wrong with him or to issue him a summons for obstructing vehicular traffic. The officers asked him questions about his identity and what he was doing. § 87(2)(b) [REDACTED] refused three requests that he provide his identification. No physical contact was initially made with him, and he walked diagonally across the intersection, away from them.

They followed him and requested that he stop, which he did voluntarily. When they again requested ID, § 87(2)(b) [REDACTED] provided a § 87(2)(b) [REDACTED] ID which only contained his name. This information was not sufficient to issue a summons, so an arrest had to be effected. § 87(2)(b) [REDACTED] snatched the ID back from PO Killilea and began walking away. PO Killilea blocked § 87(2)(b) [REDACTED] from doing so by standing in front of him. At this point, 30-50 irate civilians had gathered and a bottle was thrown from the roof of the housing projects, so at some point PO Cuttler called for backup. § 87(2)(b) [REDACTED] was directed to put his hands behind his back but did not do so, instead holding them either out to the side or over his head. The officers forced his hands behind his back and handcuffed him. PO Cuttler did not know which side of § 87(2)(b) [REDACTED] he was on. § 87(2)(b) [REDACTED] offered mild resistance. PO Cuttler did not direct any profanity towards § 87(2)(b) [REDACTED].

§ 87(2)(b) [REDACTED] was placed in the van. He had been holding a bottle in a brown paper bag at one point but PO Cuttler did not know what happened to it. A backup unit had been called and arrived prior to § 87(2)(b) [REDACTED] being handcuffed, but they had no interaction with § 87(2)(b) [REDACTED]. He was transported to the precinct after Sgt. Lopez verified his arrest, a few blocks from the scene. PO Killilea issued § 87(2)(b) [REDACTED] several summonses, which he did consult PO Cuttler about. PO Cuttler did not have any notation in his memo book and stated they would usually just call for that information over the radio.

Sgt. Capobianco

Sgt. Capobianco was interviewed by the CCRB on 4/8/03 (Encl. 21a-d) and initially did not recall the circumstances of his involvement with this incident. After being refreshed with some details, he vaguely recalled the incident. He believes he was walking by the roll call room when he was called over to verify the summonses being issued to § 87(2)(b) [REDACTED]. Though he recalls no specific details concerning what he was told about § 87(2)(b) [REDACTED]'s actions, he stated that he was sure that whatever he was told made issuing a littering summons appropriate, or he wouldn't have authorized the summons. He also mentioned that perhaps they checked the penal law to make sure a littering summons was appropriate. He did not observe § 87(2)(b) [REDACTED] in the stationhouse. In his memo book, Sgt. Capobianco noted the return date for summons as 4/2/03.

Documents

§ 87(2)(b) [REDACTED] received three summonses for various violations of the disorderly conduct penal law statute (Penal Law 240.20, Encl. 22a-b), including obscene language, threatening behavior, and obstructing vehicular traffic. The copy provided of the littering summons (Encl. 22a-b) did not have a readable violation code section, though New York State Administrative Code 16-118 (Encl. 9a-b) governs littering. All the summonses were prepared by PO Killilea and have a return date of 3/2/03. A telephone call to Kings County Criminal Court on 9/3/03 revealed that the summonses were prepared improperly and therefore cancelled. For this reason, it could not be clarified which code or law PO Killilea indicated § 87(2)(b) [REDACTED] was in violation of for his alleged littering offense.

§ 87(2)(b) [REDACTED] provided the CCRB with a photograph of his left arm, allegedly taken the day of the incident. Several purple bruises, up to a few inches in length, can be seen on his inner bicep (Encl. 15e-f).

The precinct command log (Encl. 24a-g) indicates § 87(2)(b) [REDACTED]'s arrest processing at 3:40 PM, and the fact he was issued four summonses at 4:20 PM. At 4:35 PM, the command log notes § 87(2)(b) [REDACTED]'s presence in the stationhouse and indicates she received a CCRB report.

The Sprint printout (Encl. 23a-e) indicates that the tracer unit called for assistance at 3:19 PM. Their final disposition was a 10-91, which means “non-crime corrected.” At 3:28, the tracer unit radioed one under arrest, with the sergeant responding to Christopher and Newport Streets.

CCRB Histories

§ 87(2)(b)

[REDACTED]

§ 87(2)(b)

[REDACTED]

Both PO Killilea and PO Cuttler have no prior complaints in their two-year tenure (Encls. 10-11).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[REDACTED]

Conclusions and Recommendations

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Additionally, it is uncontested that officers used only mild force to take § 87(2)(b) into custody, including grabbing his arm, pulling his hands behind his back, and pulling him towards the RMP.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A: PO Killilea forcibly stopped § 87(2)(b)

Allegation B: PO Cuttler forcibly stopped § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g) first level of intrusion as defined by New York Search and Seizure law, that is, “basic, non-threatening questions” which do not suggest the individual is the subject of an investigation, and do not allow for forcible detention (See Encl. 3a-d, and Encl. 4). The officers initially asked § 87(2)(b) his name and what he was doing. § 87(2)(b) provided his identification. PO Killilea stated repeatedly that he just wanted to find out who § 87(2)(b) was and where he was from. § 87(2)(b), § 87(2)(g)

§ 87(2)(g) § 87(2)(b) then snatched his identification back from the officers and attempted to walk away. At this time, both officers verbally and physically detained § 87(2)(b) § 87(2)(g) PO Killilea admitted to physically detaining § 87(2)(b) by placing a hand on his chest to prevent him from walking away. § 87(2)(b) alleged that PO Killilea grabbed him by the jacket just before this time, and alleged that PO Cuttler grabbed him by the arm when he was walking away. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that he pointed at officers and laughed, upon first seeing them and recognizing them as “troublemakers.” § 87(2)(b) candidly admits to provocative behavior at other points in the interaction, including physical resistance and the use of profanity towards officers. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that PO Cuttler “did all the physical stuff,” specifically, grabbing § 87(2)(b) ’s arm and forcing him backwards to the car, causing bruising to his arm. The officers admit to forcibly handcuffing § 87(2)(b) and pulling him to the RMP, and PO Killilea admits to stopping § 87(2)(b) by placing a hand on his chest. § 87(2)(b) admits to mildly resisting § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation C: PO Cuttler spoke discourteously to § 87(2)(b).

§ 87(2)(b) alleged that PO Cuttler told him “Get the fuck up against the car,” as the officers were forcibly bringing § 87(2)(b) towards their police van. § 87(2)(b), § 87(2)(g)

According to PD v. Shepherd (OATH Index 1412/00, Encl. 7a-b), officers are allowed to use profanity when used to gain compliance with an uncooperative suspect. Numerous OATH cases such as PD v. Miller (OATH Index 2127/00, Encl. 8) discuss the use of profanity as related to legitimate law-enforcement objectives. Usually such discussions point out how gratuitous, name-calling profanity is unrelated to “legitimate law-enforcement objectives,” such as attempting to enforce valid orders or commands. § 87(2)(b), § 87(2)(g)

Allegation D: PO Killilea issued § 87(2)(b) a summons for obstructing vehicular traffic.
Allegation E: PO Killilea issued § 87(2)(b) a summons for threatening behavior.
Allegation F: PO Killilea issued § 87(2)(b) a summons for littering.
Allegation G: PO Killilea issued § 87(2)(b) a summons for obscene language.

OATH tribunals have held that in order for the issuance of summons to be considered misconduct, two factors must be present: the lack of probable cause that the offense occurred and the presence of bad faith on the part of the issuing officer. § 87(2)(b), § 87(2)(g)

In regards to his first summons, for obstructing vehicular traffic, Penal Law 240.20 (5) states “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, *he obstructs vehicular or pedestrian traffic.*” PO Killilea stated that § 87(2)(b) was screaming and cursing in the middle of the road, which § 87(2)(b) denies. § 87(2)(g)

§ 87(2)(b) received his second summons, for threatening behavior, in violation of Penal Law 240.20 (1), which states that “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, *he engages in fighting or violent, tumultuous, or threatening behavior.*” PO Killilea stated that this summons was issued for § 87(2)(b)s “threatening behavior” of grabbing his ID back from PO Killilea, which allegedly caused a small scratch to the officer’s finger. PO Killilea has no documentation of this injury. § 87(2)(b) admitted to taking his ID back in the manner described by officers, § 87(2)(g)

PO Killilea stated that he issued § 87(2)(b) a summons for littering in regards to the beer bottle, which ended up on the ground. Although the violation code used by the officer cannot be read in the summons, § 87(2)(g) both § 87(2)(b) and PO Killilea himself state that the officer placed the bottle on the ground, and PO Killilea could not account for this or explain his reasoning for issuing § 87(2)(b) the littering summons. § 87(2)(g)

§ 87(2)(b) also received a summons for disorderly conduct/obscene language, in violation of Penal Law 240.20 (3), which describes the violation as, “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, *in a public place, he uses abusive or obscene language, or makes an obscene gesture.*” PO Killilea states that § 87(2)(b) called the officers “pussy-ass motherfuckers,” while screaming in the middle of the road, § 87(2)(g)

Several court decisions have refused to uphold disorderly conduct violations for statements expressing personal frustration which are directed at officers, rather than being designed to instigate a crowd (PD v. Zabawski,

OATH Index 190/92 and PD v. Popovic, OATH Index 544/00, Encl. 1a-d). § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: